

John Cuneo, Inc. and Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO. Case 10-CA-16305

August 4, 1981

DECISION AND ORDER

Upon a charge filed on October 6, 1980, by Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO, herein called the Union, and duly served on John Cuneo, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 10, issued a complaint on October 30, 1980, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that the Union is the exclusive collective-bargaining representative of Respondent's employees in an appropriate unit;¹ and that, since on or about April 21, 1980, Respondent has refused, and continues to date to refuse, to bargain with the Union as the exclusive bargaining representative by refusing to furnish the Union with a list of the names and addresses of the employees in the appropriate unit, although the Union has requested and is requesting it to do so. Thereafter, Respondent timely filed an answer to the complaint admitting in part, and denying in part, the allegations in the complaint, and raising the affirmative defense that the Charging Party was abusing the Board's processes by filing the charge in the instant case.

On May 11, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on May 15, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary

¹ On January 7, 1981, the Board issued a Decision and Order in *John Cuneo, Inc.*, 253 NLRB 1025, involving Cases 10-CA-13130, 10-CA-13280, 10-CA-13357, and 10-CA-13417, in which it found, *inter alia*, that Respondent had violated Sec. 8(a)(5) and (1) of the Act by refusing to bargain with the Union as the exclusive representative of its employees in this appropriate unit since September 16, 1977:

All employees engaged in the fabrication of fire protection systems at Respondent's sprinkler fabrication shop in Chattanooga, Tennessee, excluding all other employees, office clerical employees, truck drivers, professional employees, field installation personnel, guards and supervisors as defined in the Act.

Subsequent to the issuance of the Board's Decision and Order, Respondent filed a motion for reconsideration, which the Board denied on April 2, 1981.

Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

As already noted, the Board issued a Decision and Order involving Respondent on January 7, 1981. In 253 NLRB 1025, involving Cases 10-CA-13130, 10-CA-13280, 10-CA-13357, and 10-CA-13417, the Board found appropriate a unit consisting of all employees engaged in the fabrication of fire protection systems at Respondent's sprinkler fabrication shop in Chattanooga, Tennessee, found that a majority of the employees in the unit had signed authorization cards designating the Union as their exclusive collective-bargaining representative, and ordered Respondent to bargain with the Union as the employees' representative to remedy Respondent's unfair labor practices committed during the Union's organizing campaign. The Board denied Respondent's motion for reconsideration on April 2, 1981.

The complaint in the instant case alleges that Respondent has violated its bargaining obligation by refusing to furnish the Union with a list of the names and addresses of all the employees in the unit, which information is relevant and necessary to its role as the employees' collective-bargaining representative. Respondent's answer and response, in substance, attack the validity of the bargaining order issued by the Board in Cases 10-CA-13130, 10-CA-13280, 10-CA-13357, and 10-CA-13417. Respondent further argues that the Motion for Summary Judgment should not be granted while it is appealing the Board's Decision and Order in the previous case, and that the Charging Party acted improperly in filing charges in this case during the pendency of the appeal. The General Counsel argues that all material issues have previously been decided, and that he is entitled to summary judgment. We agree with the General Counsel.

All issues raised by Respondent in this proceeding were or could have been litigated in the prior unfair labor practice proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist which would require the Board to reexamine the decision made in the earlier proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this proceeding.

It is also well settled that collateral litigation does not suspend the duty to bargain under Section

8(a)(5) of the Act.² Indeed, Section 10(g) of the Act provides that the commencement of proceedings under Section 10(e) or (f), which provide for court review of Board orders, "shall not, unless specifically ordered by the court, operate as a stay of the Board's order."

Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

At all times material herein, the Respondent, John Cuneo, Inc., a Tennessee corporation with an office and place of business located in Chattanooga, Tennessee, has been engaged in the design, fabrication, and sale of fire protection sprinkler piping systems. In the course and conduct of its business, Respondent, during the past calendar year, a representative period, sold and shipped from its facility goods valued in excess of \$50,000 directly to customers located outside the State of Tennessee.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. The Unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All employees engaged in the fabrication of fire protection systems at Respondent's sprinkler fabrication shop in Chattanooga, Tennessee, excluding all other employees, office clerical employees, truck drivers, professional employees, field installation personnel, guards and supervisors as defined in the Act.

² *Montgomery Ward & Co., Incorporated*, 228 NLRB 1330 (1977); *Metropolitan Petroleum Company of Massachusetts, Div. of Pittston Company*, 216 NLRB 404 (1975); *Great Dane Trailers, Inc.*, 191 NLRB 6 (1971).

B. The Refusal To Bargain

Since on or about April 10, 1980, the Union has, by letter, requested Respondent to furnish it with a list of the names and addresses of all of the employees in the above-described bargaining unit, which information is relevant and necessary to the Union's role as the exclusive bargaining representative of the employees in the above-described unit. Since on or about April 21, 1980, Respondent, by letter, has refused, and continues to refuse, to furnish the Union with this information.

Accordingly, we find that Respondent has, since April 21, 1980, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit by refusing to furnish it with the names and addresses of the unit employees, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and that it take certain affirmative action designed to effectuate the policies of the Act.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. John Cuneo, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All employees engaged in the fabrication of fire protection systems at Respondent's sprinkler fabrication shop in Chattanooga, Tennessee, excluding all other employees, office clerical employees, truck drivers, professional employees, field installation personnel, guards and supervisors as defined in the Act, constitute a unit appropriate for

the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since September 16, 1977, the above-named labor organization has been and now is the exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing, on or about April 21, 1980, and continuing to refuse, to furnish the Union with a list of the names and addresses of all of the employees in the aforesaid appropriate unit, which information is relevant and necessary to the Union's role as the exclusive bargaining representative of the unit employees, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, John Cuneo, Inc., Chattanooga, Tennessee, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain with Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO, as the exclusive bargaining representative of the employees in the unit described below by refusing upon request to furnish a list of the names and addresses of all of the employees in the bargaining unit. The unit is:

All employees engaged in the fabrication of fire protection systems at Respondent's sprinkler fabrication shop in Chattanooga, Tennessee, excluding all other employees, office clerical employees, truck drivers, professional employees, field installation personnel, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, furnish the Union with a list of the names and addresses of all the employees in the appropriate bargaining unit described above.

(b) Post at its Chattanooga, Tennessee, facility copies of the attached notice marked "Appendix."³ Copies of said notice, on forms provided by the Regional Director for Region 10, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

³ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT refuse to bargain with Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO, as the exclusive bargaining representative of the employees in the unit described below, by refusing upon request to furnish a list of the names and addresses of all of the employees in the bargaining unit. This unit is:

All employees engaged in the fabrication of fire protection systems at Respondent's sprinkler fabrication shop in Chattanooga, Tennessee, excluding all other employees, office clerical employees, truck drivers, professional employees, field installation personnel, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, furnish the Union with a list of the names and addresses of all of the employees in the appropriate bargaining unit described above.

JOHN CUNEO, INC.